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COMPLIANCE: CMS May Put Your Joint Ventures Out Of Joint

5 common financial deals that may soon be illegal

Call your lawyer: You could be stuck rethinking your practice's financial arrangements if the **Centers for Medicare & Medicaid Services-** (CMS) proposed Stark law changes go through. Here are some common arrangements that the CMS proposal would make impossible:

1. Shared Costs: Two or three physician practices in the same building buy a Magnetic Resonance Imaging (MRI) scanner together. -One way to do it is to say, -We-re going to buy the scanner and every time the scanner gets used we-ll pay the scanner entity X dollars,- says attorney **David Glaser** with **Fredrikson & Byron** in Minneapolis, MN. That way, if you use the scanner 20 percent of the time, you pay the joint venture 20 percent of the costs. And then each physician group bills for its own scans.

This arrangement would violate the ban on per-click payments, Glaser says. The only way to restructure this sort of deal is to have a flat 50-50 split on the costs and revenues. But also, each practice would need its own full-time technician to avoid the ban on part-time employees.

2. Joint Venture's Services: A physician office and a clinic make a joint venture to provide physical therapy to the hospital's patients. Right now, this deal would be legal because the law considers the hospital to be the entity that provides the therapy services, not the joint venture. But under the proposed changes, the joint venture would be the entity providing services, so the physician owners wouldn't be able to send any patients to it, says Glaser.

3. Outsourced Test Fees: Someone sets up a building with a number of small -condo- labs inside it, and charges physicians a fee to perform tests there. The physicians can then turn around and bill the government for more than they paid for those tests. This would violate the proposed ban on markups for purchased tests, says attorney **William Maruca** with **Fox Rothschild** in Pittsburgh, PA.

4. Imaging Center Relations: A primary care group is leasing space in an imaging center. The new rule contains a section on Independent Diagnostic Testing Facilities (IDTFs) which says IDTFs can't share staff or equipment with other operations, notes Maruca. The physician group also can't mark up any of the services that the practice -purchases- from the imaging center.

5. Leasing Equipment: Some physicians buy an MRI and lease it to a hospital under contract. The hospital bills for the MRI services and pays a fee to the physicians. Under the new proposal, the physicians wouldn't be able to send any of their own patients to that MRI venture because the law would consider the venture the provider, not the hospital, says Maruca.